

(4) Before a project agreement is entered into, there must be satisfactory evidence that the borrower will develop the site to be acquired or will use the future water supply and that revenue will be sufficient to meet all scheduled installments.

(c) *Obligations incurred before loan closing.* (1) WS loans, WS advances, and RCD loans may be used for payment of obligations incurred before loan closing when the Rural Development State Director determines that:

- (i) The obligations incurred are necessary for planned developments; and
- (ii) The obligations are incurred for authorized loan purposes; and
- (iii) Contracts and construction plans meet RUS and NRCS standards; and
- (iv) The applicant has legal authority to incur the obligations at the time proposed; and

(v) The Rural Development State Director authorizes such action in a letter to the applicant.

(2) The Rural Development State Director's letter will specifically state that the permission is granted on the condition that RUS is not committed to make a loan and assumes no responsibility for any obligation incurred by the applicant because of the permission granted and that the loan will be closed subject to compliance with agency regulations including closing instructions of the Regional Attorney Office of the General Counsel.

**§ 1781.8 Rates and terms—WS loans and WS advances and RCD loans.**

(a) *Interest rates.* The interest rate for WS loans, WS advances and RCD loans will be at a rate not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for the loan, adjusted to the nearest  $\frac{1}{8}$  of 1 percent.

(1) For loans, unless otherwise required by State law, interest will accrue from date of check delivery where Form RD 440-22, "Promissory Note (Association Organization)," is used. Where bonds are used interest will accrue from the applicable dates recorded on the bonds. Where multiple loan disbursements are used interest will accrue from date of check.

(2) Interest on an advance for future water supply will begin as required by State law, when water is first used from the future water storage capacity installed with advance, or ten years from the scheduled date of the completion of the facility, whichever date is the earlier.

(3) Interest on an advance for preservation of sites will begin on the date the advance is closed.

(b) *Length of repayment period.* The repayment period on loans may not exceed the shortest of the following periods:

(1) The statutory limitation on the sponsoring local organization's borrowing authority.

(2) Fifty (50) years for WS loans and WS advances and 30 years for RCD loans from the date when the principal benefits from the WS works of improvement or RCD measure being financed first become available.

(3) The useful life of the WS works of improvement or RCD measure being financed with loan or advance funds.

(c) *Deferred or partial payments.* Deferred or partial payments may be authorized in the following circumstances:

(1) Payments need to be delayed until the receipt of income from taxes or other revenues is enough to meet a regular installment but not exceed:

(i) The completion date of the facility; or

(ii) The date when benefits from the facility begins; but

(iii) In no case for more than 5 years for other than future water supply.

(2) Payments will depend on the increased returns expected from planned improvements, or from the installation on individual farms of land development or other soil and water improvements essential for obtaining benefits from the improvement to be installed with loan funds.

(3) They will not be used to permit the accelerated payment of other debts, to make capital improvements, or to create operating reserves.

(4) Where prohibited by State statutes; interest payments will not be deferred even though payments on principal may be deferred.

(5) Loans or advances for future water supply will be repaid within the

life of the reservoir structure but in no event later than 50 years for WS and 30 years for RCD after the reservoir structure is built. Payments on the principal amount may be deferred one year after the water is first used from the storage capacity installed with the advance or for 10 years from the scheduled completion date of the structures, whichever occurs first.

(i) Interest will begin for a future water supply as required by State law, or when water is first used from the future storage capacity or 10 years from the scheduled date of completion of the facility, whichever occurs first.

(ii) If State law requires that interest be charged and repaid before water is first used or earlier than 10 years from completion date of the structure, interest payments will be scheduled to comply with State law even though payments of principal may be deferred.

(iii) The borrower should be encouraged to begin repayments as soon as practicable after the reservoir is built even though this liberal deferment policy exists.

(iv) WS advances for preservation of sites must be fully repaid before beginning construction of the works of improvement for which such sites were acquired.

(A) Unless a WS advance is to be repaid with a WS loan, installments will be scheduled at the earliest possible date following the date of closing the advance. The date and amount of each such installment will be fixed to coincide with the receipt of income from taxes or other revenues.

(B) Payments for both principal and interest on a WS advance for preservation of sites may be scheduled for payment in one installment to be paid on the date of the closing of a WS loan which includes funds for the repayment of the WS advance.

(C) Interest on a WS advance for preservation of sites will begin on the date the WS advance is closed.

(d) *Payment amortization and application.* (1) A borrower may make prepayments on WS loans, WS advances or RCD loans in any amount at any time.

(2) Payments will be applied first to interest accrued to the date of the receipt of payment, and second to the principal balance. If the regular pay-

ments plus any prepayments exceed the cumulative amount due, the excess payments will be applied on the next installment first to interest, then principal. Loan refunds and proceeds from the sale of security property, however, will be applied on the final unpaid installment.

(3) Payments will be scheduled annually beginning one year following the date of loan closing or one year following the end of any approved deferment period, unless another annual due date is required by State statute or upon prior written authorization from the National Office. In those cases where loans are being made under statutes requiring a repayment date other than this, the Rural Development State Director will send a copy of the Regional Attorney's opinion that such is required, to the Finance Office.

(4) When a single obligation instrument is used, amortized installments will be required. When this cannot be done because of state law, serial bonds or a single bond having installments of principal plus interest, stated separately, will be used. In cases where the payment of interest has been deferred, all collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(5) In cases where the indebtedness will be represented by serial bonds or a single bond having installments of principal plus interest, stated separately, annual payments of principal and interest will be scheduled to permit them to be paid in amounts approximately equal to the amounts that would be required for annual amortized installments.

(6) If the borrower will be retiring other debts represented by bonds or notes, the payment on such bonds may be considered in developing the payment schedule for the RUS loan. In some cases, it may be desirable to reduce the amount of payments to RUS in the early years of the loan in order to preclude the necessity for refinancing the outstanding debt. When such payment schedules are proposed, National Office authorization will be obtained prior to loan approval.

(7) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixth or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month.

**§ 1781.9 Security, feasibility, evidence of debt, title, insurance and other requirements.**

(a) *Security.* WS loans, WS advances, and RCD loans will be secured in accordance with applicable provisions of § 1780.14 of this chapter.

(b) *Feasibility.* All projects financed under the provisions of this part must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount that will provide for facility operation and maintenance, a reasonable reserve, and payment of the debt. The Rural Development State Director may obtain needed assistance in determining economic feasibility from officials of NRCS and other appropriate USDA agencies. See § 1780.7(f) of this chapter for applicable economic feasibility requirements and feasibility reports.

(c) *Notes, bonds, and bond transcript documents.* See subpart D of part 1780 of this chapter for applicable requirements and provisions.

(d) *Insurance.* See § 1780.39(g) of this chapter for requirements.

(e) *National flood insurance.* The requirements of the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003 *et seq.*) will be complied with in accordance with applicable provisions of RD Instruction 1901-L. Also see § 1780.39(g) of this chapter.

(f) *Borrower contracts and bonds.* See subpart C of part 1780 of this chapter for applicable provisions.

(g) *Title requirements.* (1) Title evidence for land, easements, and rights-of-way to be acquired with proceeds of loans or advances will be furnished by the sponsoring local organization in accordance with NRCS policies and procedures.

(2) RUS will specify and approve the form and content of instruments for conveying title to or interest in real estate on which a lien will be taken to secure a WS loan, WS advance, or RCD loan. These should be consistent with the applicable provisions of § 1780.14 of this chapter. The Rural Development State Director will make his decision after consultation with the Regional Attorney and the State Conservationist. He will notify NRCS in writing of his decision. Thereafter, title clearance will be completed under NRCS regulations except that a marketable title must be obtained on any tract of land, a part of which will be sold as excess land in accordance with § 1781.6(a)(9). In addition to the title evidence required by NRCS, applicants will furnish an opinion of legal counsel on all land and interest in land acquired with loan or advance funds.

(h) *Purchasing lands, rights and facilities.* The amounts paid for lands, rights, and facilities with loan funds will be not more than that determined to be reasonable and fair by the loan approval official based upon an appraisal of the current market value made by an Rural Development employee or an independent appraiser.

(i) *Water rights.* Applicants will be required to comply with applicable State and local laws and regulations governing appropriating, diverting, storing and using water, changing the place